

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MINERGY NEENAH, LLC,

Plaintiff,

v.

Case No. 05-C-1181

ROTARY DRYER PARTS, INC., et al.,

Defendants.

DECISION AND ORDER

Plaintiff has filed an expedited motion requesting that I summarily deny Burlington Insurance Company's second motion for summary judgment on the grounds that Burlington has already filed a summary judgment motion previously. The question posed in the original motion turned on the duty to defend, based on Illinois' familiar rule that the allegations contained in the complaint largely control the insurer's duty to defend. Burlington's latest motion primarily asserts that it has no duty to *indemnify* the defendant, based on discovery that suggests the scope of the defendant's work was broader than that alleged in the complaint. It also posits that it has no further duty to *defend* the defendant once the question of indemnification is decided in its favor.

Although this latter point is, in some sense, a successive summary judgment motion on the issue of the duty to defend, it is largely based on the independent assertion that Burlington has no duty to indemnify. The motion is not, therefore, a waste of resources or an unfair second-try. It remains to be seen whether the duty to indemnify will survive the motion, or whether the duty to defend relies on the outcome of that question or whether the duty to defend would persist even

absent the duty to indemnify. What's clear is that these are questions that could potentially be answered upon motions to the court without the need to present the matter to a jury. As such, I see little reason to disallow a second motion for summary judgment merely because an earlier one had been filed on a related topic. The plaintiff's 7.4 motion to deny [Dkt. # 187] is therefore **DENIED**; any response to Burlington's summary judgment motion may be filed by January 15, 2008; any reply by Burlington may be filed by February 6, 2008.

SO ORDERED this 14th day of December, 2007.

s/ William C. Griesbach
William C. Griesbach
United States District Judge